

The Illinois Perinatal HIV Prevention Act

Includes changes effective June 1, 2008

The Illinois Perinatal HIV Prevention Act (410 ILCS 335/) aims to eliminate HIV transmission from mothers to newborns. The U.S. Centers for Disease Control and Prevention (CDC) recommended in 2006¹ that providers conduct opt-out HIV testing of pregnant women. According to CDC, before testing, providers should counsel pregnant women about the benefits of HIV testing, inform them that they will be tested unless they decline, explain how to decline, advise that HIV testing is voluntary, and test the women for HIV unless they decline. Illinois Public Law 95-702, effective June 1, 2008, implements these guidelines, mandates the counseling before the offer of testing and permits opt-out HIV testing.

What is the benefit of the Illinois Perinatal Prevention law? According to the CDC, without treatment, there is a one in four chance that a woman will pass HIV along to her newborn. With treatment, that risk can be reduced to less than 1 in 50.² The Illinois law ensures that pregnant women are strongly encouraged to accept HIV testing and offered treatment if they are HIV-positive.

Who is required to offer HIV counseling and testing? Every healthcare professional involved in providing prenatal care, labor and delivery services, or care for newborns—including licensed physicians, physician’s assistants, and registered nurses—must counsel pregnant women about HIV and, unless they decline, provide HIV testing. For delivering women and newborns, that HIV test must be a rapid test.

What services must providers offer?

- *Prenatal care:* Health care professionals must counsel every pregnant woman about HIV and provide HIV testing unless they decline or there is documentation that they were previously tested during the current pregnancy. Providers must explain that women may decline HIV testing, but that if they decline testing, HIV testing will be mandatory for the newborn.
- *Third trimester repeat HIV testing:* Because Illinois has a high incidence of women with HIV, the CDC recommends that all pregnant women in Illinois be tested a second time for HIV during the third trimester to ensure that they have not been infected with HIV during the pregnancy. This is not required by Illinois law but is the CDC-recommended standard of care. The testing is not recommended to be a risk-based screening, but universal, voluntary, repeat testing in the third trimester for ALL pregnant women.
- *Labor and delivery:* When pregnant women present to deliver, women who lack a documented HIV test result during the current pregnancy must be counseled and provided rapid testing for HIV unless they decline. Providers must explain that women may decline HIV testing, but that if they decline testing, HIV testing will be mandatory for their newborn.
- *After delivery:* If a woman’s HIV status is still unknown after she delivers, as soon as possible within medical standards, providers must counsel the mother about HIV testing and conduct a rapid HIV test for the newborn. The mother’s or guardian’s consent is not required to test the newborn.

How must the HIV test be administered?

- All testing of pregnant women must be voluntary. Only newborns whose mother’s HIV status is unknown may be tested without consent.

- Opt-out HIV testing must be conducted for all pregnant women. They must be provided with counseling prior to HIV testing. Providers must explain that women may decline HIV testing, advise that they will be tested for HIV unless they decline, and informed how to decline testing. They must be counseled on the benefits of HIV testing, and providers must inform women that their newborn will be tested if they are not tested.
- Any testing and test results must be documented in accordance with the AIDS Confidentiality Act (410 ILCS 305/). All counseling and acceptance or refusal of testing must be recorded in the woman's medical records.
- The law requires that the mother's HIV test results be recorded in her newborn's chart. The provider must note if the test results are not available because the mother declined testing or was not tested.
- Testing of women in labor and newborns must be performed by a rapid HIV test.
- Providers may be fined for violations of the AIDS Confidentiality Act, including failing to provide adequate pre-test counseling.

What must HIV counseling include? All HIV counseling for pregnant women must be in accordance with the AIDS Confidentiality Act and include:

- The benefits of HIV testing for pregnant women, including the opportunity to prevent HIV transmission to the newborn.
- The benefit of HIV testing for the infant, including interventions to prevent transmission, and the side effects of those interventions.
- The confidentiality provisions that relate to HIV and AIDS.
- The voluntary nature of testing for pregnant women.
- The requirement that if the mother's HIV status is unknown, the newborn must be tested for HIV.
- The requirement that opt-out testing of the mother be performed, unless she declines, and how to decline.
- An explanation of the procedures to be followed.
- The availability of additional or confirmatory testing, if appropriate.

What are other requirements?

- *Hospital requirements:* Providers must report within 24 hours of birth all preliminary HIV-positive pregnant women or HIV-exposed newborns to the 24-hour perinatal HIV hotline (800-439-4079), report aggregate statistics monthly, and inform parents of the importance of treatment to prevent HIV infection of the newborn. Every healthcare facility caring for a newborn whose mother was diagnosed with HIV prior to labor and delivery must report a case of perinatal HIV exposure to the appropriate health department.
- *Illinois Department of Public Health (IDPH) requirements:* IDPH must provide case management to HIV-positive pregnant woman and their newborns, maintain the 24-hour perinatal HIV hotline, and prepare an annual report on the implementation of the Act.

For more information on the Illinois AIDS Confidentiality Act and other legal topics, download a legal guide at www.aidslegal.com or contact the AIDS Legal Council of Chicago at 312-427-8990. For more information on the implementation of this law, contact Perinatal Rapid Testing Implementation in Illinois at 773-880-4537. To view the Illinois Perinatal Prevention Act, 2007 amendments, and other resources, visit <http://www.aidschicago.org/advocacy/perinatal.php>.

¹ U.S Centers for Disease Control and Prevention, "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings," September 22, 2006, <http://www.cdc.gov/mmwr/pdf/rr/rr5514.pdf>, accessed November 29, 2007.

² U.S Centers for Disease Control and Prevention, "Pregnancy and Childbirth", <http://www.cdc.gov/hiv/topics/perinatal/index.htm>, accessed November 29, 2007.